



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 633 OF
NEW HAMPSHIRE

Complainant

and

FRANKLIN POLICE DEPARTMENT

Respondent

CASE NO. M-0696

DECISION NO. 94-28

APPEARANCES

Representing Teamsters Local 633 of NH:

Thomas D. Noonan, Business Agent

Representing City of Franklin:

Paul T. Fitzgerald, Esq.

Also appearing:

Douglas A. Boyd, City of Franklin

Charles Schultz, City of Franklin

Gary Davis, City of Franklin

John J. Kuhns, City of Franklin Police Department

James C. Pitts, City of Franklin

John Tetreault, City of Franklin Police Department

BACKGROUND

Teamsters Local 633 submitted a petition for certification of a bargaining unit within the police department of the City of Franklin on December 23, 1993. The City of Franklin responded on January 7, 1994 with objections to the inclusion of several positions. A hearing was held at the PELRB headquarters on March 8, 1994. At that time, it was determined that eight positions were in dispute. These are: 4 sergeants (supervisory), 3 dispatchers (lack of community of interest), 1 communications specialist/dispatcher supervisor (supervisory, lack of community of interest). There was agreement between the parties as to 12

positions to be included in a bargaining unit. These were 8 patrolmen, 1 detective sergeant, 1 detective, 1 administrative secretary and 1 clerk typist II/secretary. Also agreed to were the exclusions of the chief of police, 2 lieutenants and the administrative secretary who is confidential to the Chief.

FINDINGS OF FACT

1. The City of Franklin is a public employer within the meaning of RSA 273-A:1 X. It employs certified police officers and other workers to operate the Franklin Police Department.
2. The City challenges the inclusion of four sergeants in the bargaining unit because they supervise patrolmen. The City argues that they must be excluded pursuant to RSA 273-A:8 II which states that supervisory personnel may not belong to the same bargaining unit as the employees supervised.
3. Sergeant Gary Davis testified that he was hired as a patrolmen and worked in that job for six months before being made a sergeant. He has been employed for nine years at the Franklin Police Department and now supervises two patrol officers in addition to his duties as a patrol officer. He estimated that he spends seventy percent of his time performing patrolman's duties and spends thirty percent of his time reviewing paper work, writing reports and performing other supervisory work.
4. The four sergeants assign work and schedule shifts for the patrol officers they supervise. The sergeants evaluate the patrol officers on a yearly basis. Their written evaluations may be added to but are not changed by the lieutenants or the chief. Sergeants may discipline patrol officers, and this may include suspension, but they do not have authority to dismiss an employee for wrongdoing. That authority rests only with the City Manager.
5. Sergeant Davis is evaluated by Lieutenant Riber. The chief has disciplinary authority over the sergeants. When the chief and lieutenants are absent from the department, the sergeant on duty serves as chief with authority to take action in emergencies and to run the routine operations of the department.

6. City Manager James C. Pitts testified that the latter duty, taking responsibility for the operations of the Department in the absence of the chief, separated the sergeants who supervise the patrol officers from the detective sergeant who supervises one detective but is never assigned a shift when authorities are absent.
7. Sergeants attend Babson Command Institute which is geared to educate first line supervisors. It is not attended by the members of the patrol unit. Lieutenants received extra training at the FBI Academy.
8. The dispatcher supervisor performs the duties of a dispatcher/communication specialist as well as his duties as a supervisor. Testimony from Chief Douglas Boyd indicated that this position is at a department head level. This position interacts with the chief daily and reports directly to the chief. The dispatch unit is budgeted differently from other units and Dispatch Supervisor Tessier is involved with the budgeting process. He schedules working hours and leavetime for dispatchers and has input into discipline and discipline policy. According to Chief Boyd, Paul Tessier works directly with him on staffing plans and in the setting of goals for the dispatch center.
9. Charles Schultz, Jr. testified that he has been a communications specialist for the Franklin Police Department since 1985 with a nine month break in 1987. In 1990, he was made a special police officer in addition to his role with dispatch. He takes fire calls as well as police calls.
10. Dispatchers wear a uniform and work in a dispatch center within the police department but separated from the rest of the department because of the need for quiet and lack of distraction. Those who work in the dispatch center have received training from the State as a special requirement of the job. Only one of the eight patrol officers has experience and training to operate the dispatch center. He was originally hired as a dispatcher.
11. There is no strenuous physical work required of a dispatcher and the stress experienced is not of a physical nature. Dispatcher Shultz testified that he feels very involved in the emergencies to which he dispatches officers. He deals with life or death situations on a regular basis and his response to calls must be correct or the callers or officers responding will be in further danger. He feels a sense of community with the officers responding to calls.

DECISION AND ORDER

RSA 273-A:8 requires consideration of the principle of community of interest when determining an appropriate bargaining unit. The law favors an inclusive unit based on criteria spelled out in the statute. The ultimate question is whether there exists a mutuality of interest in working conditions such that it is reasonable to expect employees to be able to negotiate jointly. University System of New Hampshire v. State of New Hampshire, 117 N.H. 96 at 100. Here, dispatchers are members of the Franklin Police Department working within the same organizational structure. They are involved in the day to day business of the department and perform an essential role in the delivery of safety services to the citizens of the City. They, as with the office personnel, have different skills and training from that of the patrolmen, but they are applied to the same vital goal. The dispatchers do not get hazardous duty benefits such as Class II retirement benefits but, as with the office personnel, they share a similar leave policy and other such advantages.

RSA 273-A:8 II forbids the inclusion of discretion wielding supervisors within the same bargaining unit as those whom they supervise. In a determination as to whether or not a position is supervisory, the community of interest standard is also considered looking toward the level and degree of supervision. The concern is whether community is felt with the administration or with the rank and file. University of New Hampshire, 117 N.H. at 100, 102. It is expected that there will be conflict between supervisors and the supervised because of differing duties and relationships. Appeal of East Derry Fire Precinct, 137 N.H. 607, 610. In East Derry Fire Precinct, the Court named three indicators of supervisory authority: the authority to evaluate, the authority to discipline and the limits of the supervisory role. Id. The sergeants in the instant case perform supervisory roles analogous to those of the officers in the cited case.

Similarly, the dispatcher supervisor is largely responsible for the functioning of the dispatch unit performing the scheduling for dispatchers, and overseeing their performance. Testimony indicated that this position is involved in planning and policy development and frequently is in contact with the chief. This is due to both his longevity in the role and the specialized nature of dispatching.

The bargaining unit for negotiating within the Franklin Police Department is a fifteen member unit made up of eight patrol officers, the detective sergeant and detective, two secretarial positions and three dispatchers. This is the appropriate unit considering the facts of this case. Excluded by agreement are the chief of police, two lieutenants, one administrative secretary, and by this decision, four sergeants and the dispatcher supervisor.

So ordered.

Signed this 30th day of March, 1994.



GAIL MORRISON, Hearing Officer